

AMENDED IN SENATE JANUARY 9, 2003

SENATE BILL

No. 3

Introduced by Senator Burton
(Principal coauthor: Senator Vasconcellos)
(Coauthors: Senators Perata, ~~Scott~~ Romero, Scott, and Sher)
(Coauthors: Assembly Members Hancock, Leno, Nation, and
Steinberg)

December 2, 2002

An act to add Section 1376 to the Penal Code, relating to the death penalty.

LEGISLATIVE COUNSEL'S DIGEST

SB 3, as amended, Burton. Death penalty: mental retardation.

Existing law, added by an initiative statute, provides that the penalty for a defendant who is found guilty of murder in the first degree, where special circumstances exist, is death or imprisonment in the state prison for life. In determining the penalty to be imposed, the trier of fact ~~shall~~ *is required to* take into account whether, as a result of mental defect, the defendant had the capability to appreciate the criminality of his or her conduct or to conform that conduct to the requirements of the law, if this is relevant. A recent decision of the United States Supreme Court has held that the imposition of the death penalty on a mentally retarded person is prohibited by the Constitution.

This bill would define the term “mentally retarded” and would provide that a defendant in any case in which the prosecution seeks the death penalty may apply for an order directing that a mental retardation ~~hearing trial~~ *be held. This bill would require a court to order a trial to determine whether a defendant is mentally retarded upon submission of a declaration by a qualified expert opining that the defendant is*

mentally retarded. The bill would specify that the defendant shall present his or her evidence of mental retardation, ~~and once this evidence is presented, followed by the prosecution's evidence and any rebuttal evidence, with each party permitted to reopen only as provided. This bill would provide for other specified procedures, and would provide that~~ the prosecution shall have the burden of proving beyond a reasonable doubt that the defendant is not mentally retarded. It would provide that the penalty for a mentally retarded defendant found guilty of murder in the first degree where special circumstances which would otherwise make him or her eligible for imposition of the death penalty have been found, shall be confinement in the state prison for life without possibility of parole. This bill would also provide that if, after a mental retardation ~~hearing trial~~, the court ~~rules or jury finds~~ that the death penalty is not precluded, ~~the defendant may request a special finding from the jury at a separate phase, following conviction, that the defendant is mentally retarded.~~ It would specify that, if the defendant requests this special finding, the burden of proof shall be on the prosecution to prove beyond a reasonable doubt, and to a unanimous jury, that the defendant is not mentally retarded. The bill would provide that, if the jury determines that the defendant is not mentally retarded, ~~the jury shall be informed in the penalty phase that evidence of low intellectual functioning or deficits in adaptive behavior may be considered as a mitigating factor in determining punishment the criminal trial shall proceed as in any other case in which a sentence of death is sought by the prosecution, and the criminal jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of mental retardation.~~ Because this bill would place additional duties on prosecutors, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. Section 1376 is added to the Penal Code, to read:
2 1376. (a) As used in this section, ~~‘mentally retarded’ has the~~
3 ~~same meaning as provided in~~ “mentally retarded” means the
4 condition currently defined in subdivision (a) of Section 1001.20.

5 (b) (1) In any case in which the prosecution seeks the death
6 penalty, the defendant may, at a reasonable time prior to the
7 commencement of trial, apply for an order directing that a mental
8 retardation ~~hearing trial~~ be conducted. ~~The court shall conduct a~~
9 ~~hearing without a jury~~ Upon the submission of a declaration by a
10 qualified expert stating his or her opinion that the defendant is
11 mentally retarded, the court shall order a trial to determine
12 whether the defendant is mentally retarded. ~~At the hearing, the~~
13 ~~defendant shall present his or her evidence of mental retardation.~~
14 ~~Once this evidence is presented by the defendant, the~~

15 (2) The court shall conduct the mental retardation trial before
16 a jury unless a jury is waived by the defendant and the prosecution.
17 This jury shall decide only the question of the defendant’s mental
18 retardation. The defendant shall present evidence in support of the
19 claim that he or she is mentally retarded. The prosecution shall
20 present its case regarding the issue of whether the defendant is
21 mentally retarded. Each party may offer rebuttal evidence. The
22 court, for good cause in furtherance of justice, may permit either
23 party to reopen its case to present evidence in support of or
24 opposition to the claim of retardation.

25 (3) At the close of evidence, the prosecution shall make its final
26 argument, and the defendant shall conclude with his or her final
27 argument. The court shall instruct the jury on all matters of law
28 necessary for the rendering of a verdict. The burden of proof shall
29 be on the prosecution to prove beyond a reasonable doubt that the
30 defendant is not mentally retarded. ~~The defendant may present~~
31 ~~further evidence in response to the prosecution’s case. If the court~~
32 ~~finds that the prosecution has failed to meet its burden of proof, it~~
33 ~~shall~~ The jury shall return a verdict that either the defendant is
34 mentally retarded or the defendant is not mentally retarded. The
35 verdict of the jury shall be unanimous.

36 (c) If the jury, or the court if a jury is waived by the parties, finds
37 that the defendant is mentally retarded, the court shall preclude the
38 death penalty and the criminal trial thereafter shall ~~be conducted~~

1 *proceed* as in any other case in which a sentence of death is not
2 sought by the prosecution. If the defendant is found guilty of
3 murder in the first degree, with a finding that one or more of the
4 special circumstances enumerated in Section 190.2 are true, the
5 trial court shall sentence the defendant to confinement in the state
6 prison for life without the possibility of parole.

7 ~~(c) If a defendant is subjected to an examination for purposes~~
8 ~~of this section, any statement made by the defendant during the~~
9 ~~examination shall be inadmissible in evidence against the~~
10 ~~defendant in any criminal action or proceeding on any issue other~~
11 ~~than whether the defendant is mentally retarded.~~

12 ~~(d) (1) A ruling by the court that the death penalty is not~~
13 ~~precluded under this section shall not restrict the defendant's~~
14 ~~opportunity to introduce evidence of mental retardation during~~
15 ~~trial or to argue that the evidence should be given mitigating~~
16 ~~significance. If the trial is conducted before a jury, the jury shall~~
17 ~~not be informed of any ruling denying a defendant's motion under~~
18 ~~this section.~~

19 ~~(2) If the court determines that the death penalty is not~~
20 ~~precluded under this section, the defendant may request a special~~
21 ~~finding from the jury, at a separate phase, following a conviction~~
22 ~~of murder in the first degree with a finding that one or more of the~~
23 ~~special circumstances enumerated in Section 190.2 are true, on the~~
24 ~~question of whether the defendant is mentally retarded as defined~~
25 ~~by this section. If the defendant requests this special finding, the~~
26 ~~burden of proof shall be on the prosecution to prove beyond a~~
27 ~~reasonable doubt, and to a unanimous jury, that the defendant is not~~
28 ~~mentally retarded. If the jury determines that the defendant is~~
29 ~~mentally retarded, the court shall sentence the defendant to~~
30 ~~confinement in the state prison for life without the possibility of~~
31 ~~parole. If the jury finds that the defendant is not mentally retarded,~~
32 ~~there shall be further proceedings on the question of penalty.~~

33 ~~(3) If the matter proceeds to a penalty phase, the jury shall be~~
34 ~~informed that evidence of low intellectual functioning or deficits~~
35 ~~in adaptive behavior may be considered as a mitigating factor even~~
36 ~~though the jurors previously determined that the defendant is not~~
37 ~~mentally retarded as defined by this section.~~

38 *(d) If the jury, or the court if a jury is waived by the parties, finds*
39 *that the defendant is not mentally retarded, the trial court shall*
40 *proceed as in any other case in which a sentence of death is sought*

1 *by the prosecution. The jury shall not be informed of the prior*
2 *proceedings or the findings concerning the defendant's claim of*
3 *mental retardation.*

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

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14 CORRECTIONS

15 **Heading — Line 3.**
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